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OCT 22 PM 1 05

October 22, 2001

David Waddell
Executive Secretary
Tennessee Regulatory Authority
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Nashville, TN 37219

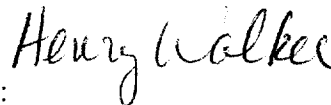
IN RE: *Universal Service for Rural Areas --- The Generic Docket*
Docket No. 00-00523

Dear David:

Please accept for filing the original and thirteen copies of Comments filed in the above-captioned proceeding on behalf of the Southeastern Competitive Carriers Association.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker *HW*

HW/nl
c: Parties
Attachment

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: GENERIC DOCKET ADDRESSING) DOCKET NO. 00-00523
RURAL UNIVERSAL SERVICE)
)

**COMMENTS OF THE SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION
TO COALITION'S PROPOSAL FOR WORKSHOP**

The Southeastern Competitive Carrier's Association ("SECCA") submits the following comments in response to the September 4, 2001 letter from the Coalition of Small LECs and Cooperatives (the "Coalition"). The letter alleges (at p. 2) that the anticipated outcome of various pending proceedings at the Federal Communications Commission will "likely place increasing pressures on rural companies to raise local basic service rates."¹ The letter asks that the Tennessee Regulatory Authority address this "growing concern" among the Coalition members by expanding the scope of the above-captioned proceeding, soliciting another round of comments concerning these proceedings at the FCC, and, in addition, convening a workshop-type hearing in which the Coalition members could "fully communicate their concerns and positions."

SECCA does not believe that the Coalition's concerns warrant any additional response from the TRA at this time. As provided by T.C.A. § 65-5-207, the Authority opened this proceeding specifically to address the impact of competition and other regulatory changes on the local rates of rural providers. *See* Order of July 14, 2000. In comments filed last year, the

¹ One of the FCC proceedings referenced in the Coalition's letter is the so-called "MAG" (Multi-Association Group) petition (CC Docket 00-256). The FCC's decision was announced on October 11, 2001. Copy attached. Contrary to the Coalition's fears, the FCC has adopted a plan which will encourage competition in rural areas "without endangering overall revenues for rates of return carriers." Statement of Chairman Powell, at 2.

Coalition urged the adoption of a “Universal Service Rate Design Restructuring Plan,” which as pointed out by SECCA and BellSouth, is essentially a “make whole” scheme designed to insure that, regardless of the impact of competition, the rural carriers will always be able to maintain current profit levels without having to file a rate case. The Authority has taken no action on the proposal.

Whatever other concerns the Coalition may have, SECCA suggests that the current docket offers the Coalition a forum for bringing to the attention of the TRA any issues under the agency’s jurisdiction which will impact the ability of rural carriers to continue providing “residential basic local exchange telephone service at affordable rates . . . after the local telephone markets are opened to competition.” T.C.A. § 65-5-207. There is no need for “expansion of the scope” of the docket, as the Coalition suggests. Furthermore, since the markets of Coalition members are not yet “open to competition,” it would be premature both legally and logically, for the TRA to consider an intrastate universal service solution to a problem that does not yet exist.²

At bottom, SECCA suggests, the Coalition’s proposal appears to be an indirect attempt to resurrect the Coalition’s rate restructuring plan and/or to urge the Authority to lobby the FCC in support of the Coalition’s positions. Neither purpose, SECCA submits, justifies a further

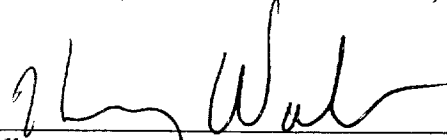
² At this time, not only does each Coalition member remain a monopoly local service provider but the Coalition is actively opposing the introduction of local competition. See dockets 99-00613 and 00-00026. Depending on the outcome of these TRA proceedings, one or two Coalition members may face competition within a matter of months. Most, though, serve markets where competitive carriers are not presently trying to gain entry.

response from the Authority.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____

A handwritten signature in black ink, appearing to read "H. Walker", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 22nd day of October, 2001.

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

FOR IMMEDIATE RELEASE:
October 11, 2001

NEWS MEDIA CONTACT:
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FCC ADOPTS ORDER TO REFORM INTERSTATE ACCESS CHARGE SYSTEM FOR RURAL CARRIERS

Action Aims for More Efficient Competition and More Choice in Rural Areas

Washington, D.C. – Today, the Federal Communications Commission (FCC) modified its interstate access charge rules and universal service support system for rate-of-return incumbent local exchange carriers (LECs). Today's action, based upon pending Commission proposals and consideration of the Multi-Association Group (MAG) petition, is designed to bring all Americans, including those in rural and high-cost areas, the benefits of competition and choice. MAG is a coalition of associations representing rural carriers, including the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and the United States Telecom Association (USTA).

Rate-of-return carriers, as opposed to price cap carriers, are typically small, rural telephone companies concentrated in one area, but they range in size from a few hundred lines to approximately one million. They generally have higher operating and equipment costs than price cap carriers due to lower subscriber density, smaller exchanges, and limited economies of scale. Rate-of-return carriers also rely more heavily on revenues from interstate access charges and universal service support. They number roughly 1,300 carriers and serve approximately eight percent of the nation's phone lines.

The Order adopted today is designed to carry out the universal service policies embodied in the Telecommunications Act of 1996, and seeks to accomplish the following three goals (specific measures adopted are attached):

1. Align the interstate access rate structure more closely with the manner in which costs are incurred by driving per-minute access charges towards lower, more cost-based levels.
2. Remove implicit support for universal service with explicit support that is portable to all eligible telecommunications carriers on a competitively neutral basis. This will provide a more equal footing for competitors in the local and long distance markets.

3. Provide certainty and stability for the small and mid-sized local telephone companies serving rural and high-cost areas by permitting these carriers to continue to set rates based on a rate-of-return of 11.25%, thereby encouraging investment in rural America.

The Commission also adopted a Further Notice of Proposed Rulemaking to seek additional comment on the MAG incentive regulation plan and other means of providing opportunities for rate-of-return carriers to increase their efficiency and competitiveness.

Today's action largely completes the interstate access charge and universal service support reforms the FCC initiated following the passage of the Telecommunications Act. Specifically, the Commission has reformed 1) intrastate high-cost support for non-rural carriers in October 1999, 2) interstate access charge and universal service support system for price cap carriers in May 2000, and 3) intrastate high-cost support for rural carriers in May 2001.

-FCC-

Docket Nos.: CC 00-256, 96-45, 98-77, 98-166

Common Carrier Bureau Staff Contact: Bill Scher at 202-418-7400.

News about the Federal Communications Commission can also be found
on the Commission's web site www.fcc.gov.

SUMMARY OF MAG ITEM

Order

- The Order increases the caps on subscriber line charges (SLCs) to the levels paid by most subscribers nationwide. The residential and single-line business SLC cap will increase to \$5.00 on January 1, 2002, and may increase up to \$6.00 on July 1, 2002, and \$6.50 on July 1, 2003, subject to a cost review study for the SLC caps of price cap carriers. The multi-line business SLC cap will increase to \$9.20 on January 1, 2002. Lifeline support will be increased in an amount equal to any SLC rate increases for low-income subscribers.
- The Order allows limited SLC deaveraging, which will enhance the competitiveness of rate-of-return carriers by giving them important pricing flexibility. The SLC deaveraging method is consistent with the Rural Task Force universal service support disaggregation scheme.
- The Order reforms the local switching and transport rate structure. In particular, it shifts the non-traffic sensitive costs of local switch line ports to the common line category, and reallocates the remaining costs contained in the Transport Interconnection Charge to other access rate elements. These measures align the rate structure more closely with the manner in which costs are incurred and reduce per-minute switched access charges.
- The Order creates a new universal service support mechanism, Interstate Common Line Support, to convert implicit support in the rate structure to explicit support that is available to all eligible telecommunications carriers. Specifically, Interstate Common Line Support will replace the carrier common line (CCL), which will be phased out as of July 1, 2003, when SLC caps reach their maximum levels. The new support mechanism will ensure that changes in the rate structure do not affect the overall recovery of interstate access costs by rate-of-return carriers serving high-cost areas.
- The Order does not adopt proposals to prescribe a single, target rate for per-minute charges, either on an optional or a mandatory basis. The reforms adopted in the Order will reduce per-minute charges for all rate-of-return carriers, while giving them the flexibility to establish rates based on their own costs in the areas they serve.
- The Order streamlines the rules for introduction of new access services by rate-of-return carriers.
- The Order terminates the proceeding on the represcription of the authorized rate-of-return, which was set at 11.25 percent in 1990.
- The Order does not adopt MAG proposals to impose new requirements on interexchange carriers. The Order concludes that the proposed requirements are unnecessary, inconsistent with the Commission's deregulatory approach to the interexchange services market, and would entail undue administrative costs and burdens.

Further Notice of Proposed Rulemaking

- The Further Notice seeks additional comment on the MAG incentive plan and how it might be modified to provide incentives for cost efficiency gains that will benefit consumers through lower rates and improved services. The Further Notice also requests further comment on the MAG's proposed changes to the "all-or-nothing rule," on additional pricing flexibility measures, and on the continued need for the Long Term Support mechanism in light of the reforms adopted in the Order.

SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166

By this action, the Commission takes another important step forward in its efforts to reform our access charge and universal service regulatory regimes to make them more consistent with the mandate for competition codified in the 1996 Telecommunications Act. I write separately to clarify a few points and to underscore my support for this action, which flows from the ample record developed in response to the Multi-Association Group (MAG) proposal for reforming rural access charges, as well as from notices and orders previously adopted by the Commission.

As I have stated on other occasions, I believe firmly that the goal of our access and universal service reforms should be to bring the benefits of competition and greater choice to consumers, while ensuring that all Americans continue to have access to affordable and reasonably comparable telephone service. The social and economic imperative of reaching this goal is nowhere more pronounced than with respect to those who live in the rural and high-cost areas served by many rate of return LECs.

Throughout the extensive proceedings that led to this decision, the Commission has consistently maintained an open and transparent process, and this *Order* reflects careful consideration of all comments and suggestions received. As early as 1997, the Commission initiated a comprehensive review of interstate access charges and universal service. The Commission's earliest actions in this regard reformed access charges for price-cap incumbent LECs, *i.e.*, the largest incumbents.

The Commission has always recognized, however, that "one size does not fit all" when addressing the needs of rural and small companies. Therefore, the Commission decided to handle rural access reform separately from access reform for the larger carriers. This separate treatment has allowed the Commission to focus on both the specific needs of rural and small carriers and commenters' suggestions on how best to address those needs.

Even within the rural LEC component of our access reform effort, the Commission's process has been extensive. For example:

- In 1998, the Commission issued a Notice of Proposed Rulemaking which generated an extensive record regarding proposals for rural access reform. Thus, the Commission began its deliberations regarding rural access reform more than three years ago, and more than two years before the MAG proposal was even submitted to us.

- In early 2001, the Commission issued another Notice to expand the record further by seeking comment on whether the MAG proposal for access reform should be adopted in whole, in part, or not at all. The comment period for this Notice closed seven months ago.
- Over the past seven months, the Commission has carefully evaluated the extensive responses to its 1998 Notice, as well as comments on the MAG proposal from several dozen diverse parties. These parties have included incumbent rate of return LECs, state commissions, interexchange carriers, competitive LECs, consumer groups and their representatives.
- Additionally, the Commission has met repeatedly with parties including MAG and made note of industry concerns with regard to access reform precedents and policy.

Throughout the months and years the Commission has devoted to rural access charge reform, numerous parties representing a variety of interests have urged us to press forward expeditiously. Many of these parties were concerned, as I am, that we not subject communities served by rural LECs to the same regulatory barriers to competition that we struggled to remove in the context of price cap access reform.

Now that all interested parties have had a substantial opportunity to comment on the MAG proposal as well as on prior proposals, the time has come for the Commission to proceed with access charge and universal service reform for rate of return carriers. I applaud the MAG industry group for its efforts to bring a plan to the Commission for its consideration. The Commission's duty, however, is to exercise independent judgment that advances the *public* interest, rather than the interests of one side or the other. In doing so, we have declined to adopt the MAG plan in its entirety, taking account of other important interests and concerns.

Thus, the approach we adopt here incorporates major features of the MAG proposal, while addressing valid concerns raised by the extensive input from interested commenters. It represents a cautious approach that would rationalize the rate structure and convert identifiable implicit subsidies in access charges to explicit universal service support, without endangering overall revenues for rate of return carriers. Consequently, this approach should enable incumbent carriers and competitors to compete on an equal footing in rural areas and increase incentives for long distance carriers to compete for customers in rural areas.

Further, I believe the approach we take here will promote regulatory stability for small local telephone companies, and encourage investment in rural America, by creating a new, portable universal service support mechanism. This mechanism is intended to ensure that changes in the access rate structure do not affect small carriers' overall recovery of their interstate access costs.

Resolving issues this complex requires tough choices, which cannot continually be put off and which are rarely greeted with unanimous popular acclaim. Yet the Commission's role is not to play to its various audiences but to make these tough choices, guided by principle, the record and our best judgment. It is my conviction that we have, in performing this role, assiduously considered and balanced the input of a variety of interested parties that leads me to support this *Order* and the enormous hard work that my colleagues and our staff have invested in its fruition.

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

*Re: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of
Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*

Notwithstanding the tremendous importance of addressing access charge reform for rural carriers, I respectfully dissent from today's order. While we must move forward as expeditiously as possible to complete this process, it is dangerous to proceed prematurely to an order before we know the full implications of our actions. Rural carriers, consumer advocates, and state commissions, among others, express great apprehension about the impact of today's decision. I find no clear consumer benefits from moving ahead before we get all of the facts and air all of the concerns. In sum, I fear that we are outdriving our headlights.

I believe the more prudent course of action would have been to seek comment on the new proposal the Commission adopts today in order to ensure that it achieves the objectives Congress laid out in the Telecommunications Act of 1996.

A core principle of the 1996 Act is that all Americans should have access to reasonably comparable services at reasonably comparable rates. At the same time, given the goal of competition in all telecommunications markets, Congress directed us to establish a universal service support mechanism that is explicit and sufficient in a competitive market. As we restructure rates and make explicit the hidden subsidies in access charges, we must recognize that these implicit subsidies were used to finance affordable services.

It is not easy to work out the details of a new regime. Last year, rural carriers and their associations proposed a comprehensive plan to resolve numerous issues facing rural carriers, including reform of access charges and universal service support, and a new incentive form of regulation. This proposal became known as the Multi-Association Group (MAG) plan. Other carriers including IXC's and wireless carriers submitted their own proposal to address certain of these issues.

The majority today takes up a piece of the comprehensive MAG plan – access charge reform – but adopts significant modifications to the proposals submitted to the Commission. Some argue that it would be an extraordinary measure to seek additional comment on the Commission's proposals. Given the breadth of concerns that have been raised, and the lack of opportunity for affected parties to analyze this new proposal, I think it would be extraordinary not to seek additional comment.

Many parties have raised significant concerns. We have heard from rural carriers concerned about the impact of today's action on telecommunications investment in rural areas, including broadband investment; from state commissions concerned about the harmful impact on universal service support mechanisms; and from consumer advocates

concerned about increased consumer rates that will likely result from this order. This being the case, and when the task before us is so complicated, I believe in this instance it is incumbent on us to err on the side of caution to ensure that the actions we take are wise rather than merely expeditious.

I do not advocate delay lightly. But were we to put this proposal out for comment and continue to give these issues the high priority they deserve, we could address all these concerns and adopt a final order in a few months -- in time to implement access charge reform by July 1, which is, I would point out, the *same date* for implementation of the new support mechanism contained in today's order. The cost of gathering more information would therefore be minor, and the benefits multiple.

As it stands, however, without airing and receiving comments on the contours of the reforms adopted today, I have serious concerns that we do not understand the full impact of today's decision on rural America. For rural carriers, access charges and universal service comprise the substantial majority of their revenue stream. The goal of access charge reform must be not only to remove, and make explicit, the implicit subsidies in access charges, but must also provide the stability necessary for investment in rural America. It is essential that any regime we adopt increases certainty so that rural carriers can plan for the future and undertake necessary investment to modernize the telecommunications infrastructure in their communities. I am concerned by claims that this order will, to the contrary, increase uncertainty for rural carriers, impeding infrastructure investment and broadband deployment.

I am further concerned about the effect of this order on consumer rates, particularly for those who live in rural areas. As we transition to a new access charge regime, it is imperative that we prevent upward pressure on rates in high-cost areas. Rural consumers will only benefit when we establish an economically rational mechanism that will promote not only the Act's objective of competition, but also its goal of universal service.

The Commission has already made substantial progress towards ensuring that universal service and access charge regimes have been adapted to the changing marketplace. We have adopted universal service reforms for both rural and non-rural carriers. And we have identified, and made explicit, the subsidies embedded in access charges for price cap carriers in order to reduce distortions in the marketplace that serve as impediments to competition. In this instance, I believe the Commission needs more information to ensure that the action we take is in the public interest. The public interest can be well and faithfully served if we accord this far-reaching new proposal the stakeholder input it deserves. This can be done quickly and with much more consensus at the end of the process than we will otherwise have today.

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

*Re: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of
Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,
Second Report and Order and Further Notice of Proposed Rulemaking, CC
Docket No. 00-256*

I write separately to explain my reservations with this Order and why I nevertheless join in approving it. I am sympathetic to the calls of many rural carriers to seek more comment before moving forward on this item. Having seen the Commission fail to reach these issues for years despite the pleas of the carriers, it seems somewhat ironic that the Commission feels it necessary to do so now, when the carriers would like the Commission to wait.

Nevertheless, after careful consideration, I am convinced that growing disparities between the access rates of rural, rate-of-return and other, price-cap carriers should be addressed sooner rather than later. These disparities can create problems in conjunction with our rate averaging and rate integration policies, which require IXC's to charge rates in rural and high cost areas that are no higher than rates they charge in urban areas and to charge comparable rates in each State. See 47 U.S.C. § 254(g); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Report and Order, 11 FCC Rcd 9564, ¶¶ 9, 20, 52. As a result, IXC's that serve rural and high cost areas must charge higher rates to all of their customers than IXC's that do not serve such areas. As rate disparities grow, the pressure for IXC's to stop serving rural and high cost areas also grows; IXC's will either lose money serving these rural areas or will be forced to charge higher rates in low cost areas than their competitors. Without Commission action, I fear that these rate disparities may lead IXC's to exit rural and high cost markets altogether, causing great harm to rural America. This Order, in reforming the access rate structure of largely rural rate-of-return carriers, reduces these growing disparities and begins to address this problem.

I also note that I have some concerns with the Commission's policy – adopted long before this Order – of using universal support as a means of creating “competition” in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund. It is thus with real pause that I sign on to an Order that may further this policy.

I will continue to examine these issues as well as the other concerns raised regarding the impact that our policies may have on rural America. And, in that vein, I am committed to evaluating these issues and remain receptive to making significant changes as we move forward.